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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,897	04/04/2005	Jack W Long	T3403-902778US01	8878
181 7590 01/24/2008 MILES & STOCKBRIDGE PC 1751 PINNACLE DRIVE SUITE 500 MCLEAN, VA 22102-3833				
			EXAMINER KUMAR, PREETI	
			ART UNIT 1796	PAPER NUMBER
			NOTIFICATION DATE 01/24/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocketing@milesstockbridge.com
sstiles@milesstockbridge.com

Office Action Summary	Application No. 10/500,897	Applicant(s) LONG, JACK W	
	Examiner Preeti Kumar	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 14 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/10/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I claims 1-13 in the reply filed on 11/5/2007 is acknowledged. The traversal is on the ground(s) that Examiner has not demonstrated that 2 or more claimed inventions have no disclosed relationship and thus no unity of invention. This is not found persuasive because the examiner indicated in the restriction requirement that at least one reference, namely, de Sousa et al. (US 4,503,100) teach a pesticide composition comprising 5.5 parts of Permethrin, 3 parts phosphoric acid and 12.5 parts of the Na salt of sulfated nonylphenol ethoxylated with 40 mol of ethylene oxide, for spray application to woolen textile. See examples 6-8. in col.29-30. This teaching of de Sousa et al. illustrates that the claimed composition is not novel. Accordingly, the composition of Group I and the method of Group II lack the same or corresponding special technical feature and thus lack unity of invention since at least one prior art exemplifies the claimed composition. The requirement is still deemed proper and is therefore made FINAL.

Non-Final Rejection

2. Claims 1-13 are pending. Claims 14-15 are withdrawn from consideration as being drawn to a non-elected invention.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on 10/10/2007 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Sousa et al. (US 4,503,100).

de Sousa et al. (US 4,503,100) teach a composition for mothproofing and beetleproofing keratinous material, in particular woolen textiles, to protect against attack by keratin pests. Specifically, in col.30-31, examples 8-9, de Sousa et al. illustrate the antimicrobial composition comprising 5.5 parts of Permethrin pesticide, 3 parts phosphoric acid and 12.5 parts of the Na salt of sulfated nonylphenol ethoxylated with 40 mol of ethylene oxide, for spray application to woolen textile.

Regarding the claimed antimicrobial agent comprising a blend of substituted ammonium salts of alkylated phosphoric acids admixed with free alkylated phosphoric acid; de Sousa et al. teach 5-phenylcarbamoylbarbiturate(s) of the formula recited in

col.2,ln.1-10, which can exist in several tautomeric forms, and can be employed in the form of their salts. The alkali metal, ammonium or amine salts should be mentioned particularly, and sodium, potassium, ammonium or alkylamine, especially triethylamine, salts are preferred. See col.3,ln.1-10.

Regarding the claimed emulsifier comprising ammonium nonylphenol ether sulfate, de Sousa et al. exemplify the utility of sodium salt of sulfated nonylphenol ethoxylate, however, one of ordinary skill would be motivated to modify the teaching of de Sousa et al. with the claimed ammonium salt because de Sousa et al. teach various sodium, potassium, ammonium salts in general.

de Sousa et al. do not teach the claimed blend of substituted ammonium salts of alkylated phosphoric acid as recited by the instant claims. de Sousa et al. exemplify the utility of sodium salts admixed with alkylated phosphoric acid. See ex 8-9.

Also, de Sousa et al. do not teach the claimed fragrance additive of claim 2.

It would have been obvious to one of ordinary skill, at the time the invention was made to modify the active compounds by employing alkali metal, ammonium or amine salts as recited by the instant claims because de Sousa et al. suggest sodium, potassium, ammonium or alkylamine, especially triethylamine, salts are preferred. See col.3,ln.1-5.

Also, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the antimicrobial composition of de Sousa et al. with a fragrance additive, because fragrance additives in textile treatment compositions are notoriously well known in the art.

5. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over McIntosh (US 5,032,310).

McIntosh teaches a microbiocidal cleansing and disinfecting solution that includes an effective amount of salt of phosphoric acid. McIntosh teaches the phosphoric acid ester can be added to water to provide a microbiocidal disinfectant solution or can be added to a conventional detergent to provide a microbiocidal cleansing solution. The detergents that can be used in the cleansing solution include, but are not limited to, linear alkyl sulfonates, alkyl benzene sulfonates, and metal salts of long chain fatty acids. See col.3,ln.37-43. The effective amount of phosphoric acid ester to be used in the cleanser or detergent will vary based on the job to be done. For example, a light duty disinfectant may include from 0.005 to 0.01% (50 to 100 ppm) phosphoric acid ester, whereas a heavy duty cleanser might include from 15 to 70% phosphoric acid ester. See col.3,ln.45-50.

McIntosh does not teach the claimed pesticide containing Permethrin.

de Sousa et al. are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to arrive at the claimed antibacterial composition comprising a blend of substituted ammonium salts of alkylated phosphoric acids admixed with free alkylated phosphoric acid; an effective amount of a pesticide containing Permethrin; and a sufficient amount of an emulsifier to maintain a stable emulsion as recited by the instant claims, because McIntosh teach a microbiocidal composition comprising the claimed antimicrobial agent and de Sousa et al. teach the beneficial utility of Permethrin

pesticide in microbiocidal composition. One of ordinary skill in the art would have been motivated to combine the teachings of McIntosh with de Sousa et al. since both reference teach the analogous art of antimicrobial compositions for application to textile.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

7. Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Preeti Kumar whose telephone number is 571-272-1320. The examiner can normally be reached on 6:30 am-2:30 pm M-F. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Examiner Preeti Kumar
Art Unit 1796

/PK/

/Vasu Jagannathan/
Supervisory Patent Examiner
Technology Center 1700